

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. 07-365
v.)	
)	
CITY OF HASTINGS,)	
DRAVO CORPORATION, and)	
DUTTON-LAINSON COMPANY,)	
)	
Defendant.)	
_____)	

COMPLAINT

1. The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA") files this complaint and allege as follows:

NATURE OF THE ACTION

2. This is a civil action brought pursuant to Sections 107 and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606, 9607 and 9613(g), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"). The United States seeks the recovery, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), of unreimbursed response costs incurred, and to be incurred, in response to releases and threatened releases of hazardous substances into the environment at and from the North Landfill Subsite of the Hastings Groundwater Site in Hastings, Nebraska. The United States also seeks a

declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), holding the defendant liable for all future response costs that will be binding in any subsequent action or actions to recover further response costs incurred by the United States or the State at or in connection with OU2 at the Railroad Avenue Superfund Site.

3. The City of Hastings owns and operated a landfill at the North Landfill Site to which parties including Dravo Corporation and Dutton-Lainson Company sent wastes containing hazardous substances. The disposal of these wastes has resulted in the contamination of the Landfill property, as well as the adjoining groundwater. The North Landfill Subsite (“Subsite”) includes, but is not limited to, property located the property located between the Burlington Northern Santa Fe Railway and Highway 5 in Adams County, Nebraska, and also encompasses the groundwater plume emanating from that property, as well as any other areas where hazardous substances released from that property have come to be located.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c) because the claims arose and the threatened and actual releases of hazardous substances occurred in this district.

DEFENDANTS

5. At times relevant hereto, defendant City of Hastings has owned and/or operated a facility at the Subsite, within the meaning of sections 107(a)(1) and (a)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and (a)(2).

6. The City of Hastings is a municipality in the State of Nebraska and, therefore, a person under 42 U.S.C. § 9601(21).

7. At times relevant hereto, Hastings Industries, Inc., which was known as Hastings Air Conditioning and Dutton-Lainson Company arranged for the disposal of wastes containing hazardous substances at the Subsite.

8. Dravo Corporation is the corporate successor of Hastings Industries, Inc., which was known as Hastings Air Conditioning.

9. Dravo Corporation is a corporation formed and existing under the laws of the State of Pennsylvania is, therefore, a person under 42 U.S.C. § 9601(21).

10. Dutton-Lainson Company is a corporation formed and existing under the laws of the State of Nebraska and is, therefore, a person under 42 U.S.C. § 9601(21).

GENERAL ALLEGATIONS

11. The North Landfill Subsite is part of the Hastings Groundwater Contamination Site located in and around Hastings, Adams County, Nebraska. The North Landfill Subsite is located east of the eastern city limit of Hastings, Nebraska between the Burlington Northern Santa Fe Railway and Highway 6 in Adams County.

12. Between approximately August 1961 through approximately 1964, the City of Hastings operated a landfill at the Subsite. Among other wastes, the City of Hastings accepted for disposal wastes containing volatile organic compounds including trichloroethene (“TCE”).

13. Between approximately 1961 and 1963, Dravo Corporation’s predecessor Hastings Industries, Inc. (d/b/a Hastings Air Conditioning) arranged for the disposal of

wastes containing TCE and other hazardous substances. These wastes were disposed of at the North Landfill.

14. At relevant times, Dutton-Lainson Company arranged for the disposal of wastes containing TCE and other hazardous substances. These wastes were disposed of at the North Landfill.

15. TCE and other hazardous substances disposed of at the North Landfill have migrated to the groundwater below and surrounding the North Landfill.

16. There were and are "releases," as defined at Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and the threat of continuing releases, of "hazardous substances," as defined in 42 U.S.C. § 9601(14), into the environment at the Subsite.

17. The releases and threatened releases of hazardous substances at the Subsite caused the United States to incur costs of "response" within the meaning of 42 U.S.C. § 9601(25).

18. The Site is a "facility" within the meaning of 42 U.S.C. § 9601(9).

CLAIM FOR RELIEF

19. The preceding allegations are included in this claim for relief.

20. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides that, “[n]otwithstanding any other provision or rule of law, and subject only” to the statutorily defined defenses “the owner or operator of a vessel or a facility . . . [and] any person who by contract, agreement, or otherwise arranged for disposal or treatment of hazardous substances owned or possessed by such person . . . shall be liable for . . . all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan”

21. Each of the Defendants is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

22.. The City of Hastings is an “owner or operator” of a facility within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

23. Dravo Corporation and Dutton-Lainson Company arranged for the disposal of hazardous substances within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

24. The United States has incurred response costs in connection with response actions at the Subsite, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. The United States continues to incur response costs, including enforcement costs associated with the recovery of funds expended in response to the releases and threatened releases of hazardous substances at the Subsite.

25. The response actions taken and the response costs incurred by the United States at the Subsite are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

26. The City of Hastings, Dravo Corporation, and Dutton-Lainson Company are jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all response costs incurred by the United States in connection with the Subsite.

REQUEST FOR RELIEF

WHEREFORE, the United States respectfully requests that the Court:

1. Enter judgment against the Defendants jointly and severally, for all response costs incurred by the United States in connection with the Subsite;

2. Enter a declaratory judgment of liability against each Defendant that will be binding in any action to recover further response costs incurred by the United States in connection with the Subsite;

3. Award the United States its costs in this action; and

4. Grant such other and further relief as is appropriate.

Respectfully submitted,

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